

MONTANA LEGISLATIVE HISTORY

Chapter 361 19 75

Bill H _____ S 130

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 3-20 ☒ c

_____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 1-28 ☒ c

2-5 ☒ c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

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Senate BILL NO. 130
Turnage

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
82-4311, R.C.M. 1947, TO ADD A FILING FEE TO BE PAID TO THE
SECRETARY OF STATE WHEN FILING TORT CLAIMS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4311, R.C.M. 1947, is amended to
read as follows:

"82-4311. Filing of claims against state--time of
filing. All claims against the state arising under the
provisions of this act shall be presented to and filed with
the secretary of state within one hundred twenty (120) days
from the date of the occurrence from which the claim arose
or when the injury should reasonably have been discovered,
whichever is later. A fee of ten dollars (\$10) shall be paid
to the secretary of state at the time the claim is presented
for filing."

-End-

INTRODUCED BILL

SB 130

44th

LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

<u>SENATE</u>	<u>ENTERED</u>	<u>DATE</u>	<u>OUT OF</u>	<u>DO PASS</u>	<u>DO NOT</u>	<u>DO PASS</u>	<u>BE CON-</u>	<u>BE CONC. IN</u>	<u>BE NOT CC</u>
<u>BILL NO.</u>	<u>COMM.</u>	<u>CONSIDERED</u>	<u>COMM.</u>	<u>DATE</u>	<u>PASS</u>	<u>AS AMEND.</u>	<u>CURRED IN</u>	<u>P.S. AMENDED</u>	<u>CURRED IN</u>
					<u>DATE</u>	<u>DATE</u>	<u>DATE</u>	<u>DATE</u>	<u>DATE</u>
121	1/18/75	1/24/75	2/10/75			2/10/75			
122	1/18/75	1/24/75	1/24/75	1/24/75					
123	1/18/75	1/24/75	1/24/75	1/24/75					
124	1/18/75	1/24/75	1/24/75	1/24/75					
125	1/18/75	1/28/75	2/25/75		as amend 2/24/75				
130	1/20/75	1/28/75	2/5/75	2/5/75					
134	1/20/75	1/27/75	2/5/75			2/5/75			
138	1/21/75	1/29/75	2/5/75			2/5/75			
143	1/21/75	1/30/75	2/5/75			2/5/75			
148	1/21/75	1/29/75	2/21/75			2/21/75			
153	2/1/75	2/18/75	2/24/75			2/24/75			
154	1/21/75	2/24/75	2/24/75	2/24/75					
161	1/21/75	1/30/75	2/1/75			1/30/75			
162	1/28/75	2/7/75	2/10/75			2/10/75			
172	1/22/75	2/4/75	2/21/75		2/21/75				
175	1/22/75	2/3/75	2/25/75			2/24/75			
176	1/24/75	2/3/75	2/10/75		2/10/75				

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
JANUARY 28, 1975

The meeting was called order by Senator Towe, Chairman, at 9:40-a.m., in room 410 of the Capitol Building.

There being no witnesses present, HB 31 was held for hearing at a later date.

The following bills were discussed: SB 130
SB 125

SB 130 Senator Turnage, District 13 and sponsor of the bill, stated the bill provides for a \$10 fee for filing tort claims. He introduced Dorris Dietzen, Deputy Secretary of State, who presented written testimony (attached).

SB 125 Senator Turnage, District 13 and sponsor of the bill, stated SB125 has been written in an effort to provide a system of checks and balances in the Montana Administrative Procedures Act by requiring legislative approval before a substantive rule becomes effective with a provision for emergency rule approval between sessions. Senator Turnage presented two amendments to be considered by the Committee (attached).

PROPOSERS

Senator Lynch, from District 42 and co-sponsor of the bill, spoke in support of the bill citing an example of abuse of the APA in which a piece of legislation that was defeated was written as a rule but was discovered and removed. He stated some departments have written 200 pages of regulations a month. He felt there are too many rules being written, many are infringing on legislative procedure and SB25 would curtail the proliferation of rules.

Bob Durkee, representing the Montana Tavern Association, presented that group's support of SB125. He felt the bill would benefit the Association and endorsed the bill.

William Romine, representing the Montana Mining Association, presented his written testimony in support of SB125 (attached)

Edward Nelson, representing Montana Taxpayers Association, agreed with the previous testimony and presented an editorial (attached) concerning the situation. He urged support of the bill citing the great difficulty encountered in endeavoring to stay current with the rules and difficulty in keeping abreast of hearings.

ROLL CALL

Judiciary COMMITTEE

44th

7400
~~SECOND HALF~~ - 43rd LEGISLATIVE SESSION 1975

Date _____

[illegible]

STATE TORT CLAIMS

1. Secretary of State is required under Section 25-102 (6) or (7), R.C.M. 1947, for filing and recording papers etc., of a "miscellaneous" character or for filing and recording any other paper "not otherwise provided for" a fee of \$5.00.
2. Because there is no provision in the Montana Comprehensive State Insurance Plan and Tort Claims Act for a filing fee, most claims presented for filing under this act are not accompanied by the miscellaneous filing fee, generally it is necessary to either call the individual or the claimant's attorney and explain the requirement of the fee under Section 25-102 (6) or (7), R.C.M. 1947.
3. There is a statutory time limitation for filing a tort claim with the Secretary of State's Office which has presented a constant concern that failure to present the filing fee might interfere with the timely filing of a claim. (To date this has not occurred, however, this contingency does exist.)
4. It is unlikely that the legislature intended that the filing expenses should be totally supported by the General Fund.
5. No filing fees are required for state departments such as the filing of rules for the Administrative Code, the Executive Record, State Oil Leases and the housekeeping filings of the state.
6. Corporate documents or liens covering secured transactions of a private individual which are required to be filed in the office of the Secretary of State have required filing fees.

FINDINGS:

Overall costs and expenses for filing, custodial maintenance and preservation of the document come to substantially more than the statutory "miscellaneous filing fee", therefore, a reasonable fee should not be less than \$10.00.

The following must be accounted for in figuring cost estimates:

1. Time required - minimum
 - Hourly salary - Filing Officer and Assistant
 - Filing time - 1 hour and 15 minutes
 - Telephone - 10 to 20 minutes
 - Delivery - 20 to 45 minutes

2. Miscellaneous supplies and material

Stationery
Index Cards
File Folders
Receipts

3. Postage

4. Equipment and Maintenance

Typewriter
Photocopies
Files

5. Custodial Maintenance and Preservation of Document

Plant
Vault

Name James H. Eastman Bill No. 74
Address 101 E. 1st St. New York City New York

Whom do you represent? Secretary of State

Amend? _____ Oppose? _____ Support? ✓

Please leave prepared statement with secretary.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
FEBRUARY 5, 1975

The meeting was called to order by Senator Towe, Chairman, at 9:42 a.m. in room 442 of the Capitol Building.

The following bills were discussed:

- HJR 6
- SB 228
- SB 276
- SB 130
- SB 134
- SB 138
- SB 143
- HB 99

HJR 6 Representative Polly Holmes, District 67, stated the purpose of the resolution is to request Congress to study the social security laws to eliminate discrimination regarding marital status.

Kathy McGowan, Citizen Advocate, stated she had received many calls from Senior Citizens who are troubled by the law and their status should they remarry.

Jan Gerke, representing the Helena Women's Political Caucus, supported the bill.

SB 228 Senator Roberts, District 11 and sponsor of the bill, stated the purpose of the bill is to create the 19th Judicial District. This would be a new district composed of Lincoln and Sanders Counties, however, Senator Roberts stated he would amend the bill in Committee discussion to eliminate Sanders County and the district would be composed of Lincoln County only. Senator Roberts presented letters of support, including a letter from Judge Sykes, to the Committee (attache

Bill Douglas, attorney from Lincoln County stated he had with him, supporting the bill, all the members of the Lincoln County Bar Association (less two). He presented written statistics concerning cases in court to the Committee (attache He also stated the population base is expanding in Lincoln County and due to two large mines planning expansion, that base could increase by approximately 500 families in the near future.

Frank Morrison, Whitefish, stated that all fifty lawyers in the Flathead County Bar Association endorse the bill. He felt it would alleviate an intolerable condition which exists presently where judges are available only one to days a week.

- HJR 6 SENATOR WARDEN MOVED HJR 6 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.
- SB 130 SENATOR GREELY MOVED SB 130 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.
- SB 134 SENATOR TURNAGE MOVED TO AMEND THE BILL BY STRIKING "PLAINTIFF" ON PAGE 1, LINE 12 AND 12, AND PAGE 2, LINE 1, AND INSERTING "PERSON CLAIMING THE PROPERTY"; AND FURTHER AMEND THE BILL ON PAGE 2, LINE 14 BY STRIKING "HOLDING" AND INSERTING FOLLOWING "PROPERTY" ON LINE 14 "IF SUCH PERSON CANNOT BE FOUND FOR PERSONAL SERVICE, NOTICE POSTED ON THE PROPERTY AND IN THREE (3) PUBLIC PLACES IN THE COUNTY WHERE THE PROPERTY IS LOCATED IS SUFFICIENT SERVICE FOR THIS PURPOSE". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.
- SENATOR TURNAGE MOVED SB 134 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.
- SB 138 SENATOR TURNAGE MOVED TO AMEND LINE 15 AND 20 BY STRIKING "SHALL" AND INSERTING "MAY". SENATOR CETRONE ASKED TO CONSIDER THE AMENDMENTS SEPARATELY. SENATOR TURNAGE WITHDREW THE AMENDMENT TO LINE 15. THE MOTION TO AMEND LINE 20 CARRIED UNANIMOUSLY ON A ROLL CALL VOTE. SENATOR TURNAGE MOVED SB 138 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.
- SB 143 SENATOR TURNAGE MOVED TO AMEND THE BILL ON PAGE 4, LINE 14 BY STRIKING "RIGHT TO BRING SUCH" AND FURTHER AMEND BY STRIKING "IS WAIVED" AND INSERTING "SHALL NOT BE COMMENCED". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.
- SENATOR TURNAGE MOVED SB 143 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.
- HB 99 SENATOR GREELY MOVED HB 99 DO PASS. SENATOR WARDEN SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Towe assigned the following bills to be carried on the floor:
HB 31 - Senator Greely
HB 99 - Senator Cetrone
HJR 6 - Senator Warden.

February 5

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 130

Respectfully report as follows: That SENATE Bill No. 130

DO PASS

1975
house

JUDICIARY COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 41	Subjecting every fee set or charged by a state agency in its discretion to review & approval by the legislature.	3/5/75	Story	3/19/75		
SB 130	An act amending section 82-4311 to add a filing fee to be paid to the secretary of state when filing tort claims.	3/10/75	Turnage	3/20/75	BE CONCURRED IN	3/21/75
SB 189	To provide that absentee voter application forms & ballot envelopes shall be affirmed by the absentee elector.	3/11/75	Lynch		BE CONCURRED IN	3/14/75
HR 4	Requesting the appointment of a special select committee on censure to investigate the campaign practices, preceeding the 74 Mt. general election.	3/12/75	Harper	3/18/75	ESTABLISH A SELECT COMMITTEE	3/18/75
HB 149	Relating to the age, residence, and notice requirements for the issuance of marriage licenses.	3/12/75	Seifert		one page found proposed in 1974	
SB 393	To change the consumer counsel committee into a committee for protection of citizens' rights	3/24/75	Towe	bill heard previously.	AS SO AMENDED BE CONCURRED IN	3/25/75

March 20, 1975

The seventy-second meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana, on Thursday, March 20, 1975, at 9:00 AM. Representative Herb Huennekens, Chairman, presided. All members were present except Representative Kimble, absent, excused.

Bills scheduled for hearing this date were Senate Bills Nos. 139 and 250, taken in this order.

SENATE BILL NO. 130 Senator Jean A. Turnage, District #13, is chief sponsor of this act to add a filing fee to be paid to the Secretary of State when filing tort claims. He introduced this at the request of the Secretary of State. This office is afraid sometime a claim will come in without a fee and with a deadline problems could arise. The \$10 filing fee is justified as reasonable based on the processing mechanics the Secretary of State must go through as required by law. They are actually losing money.

Proponent Dorris R. Dietzen, representing the Secretary of State's Office, stated they favor the bill and provided the committee with prepared testimony (see exhibit).

There were no other proponents and no opponents. Senator Turnage elected not to close. Following very brief questioning by the committee, the hearing was closed.

SENATE BILL NO. 250 Senator Cornie R. Thiessen, District #27, is chief sponsor of this act for the revision of the laws relating to obscenity. He stated he handled this bill for a group of people that insisted something be tightened up. The bill was amended by the Senate down to where it is only a matter of making it legal and proper within the confines of the United States and state Constitutions. Two of his chief proponents were unable to be present to testify today.

Proponent Mr. Biers stated the bill, as it now stands, is an attempt to make present law in Montana; the old code was based on *Memoirs vs. Massachusetts* case. He stated the problem with the Montana code now is conduct which you are going to regulate must be specifically designated. We have to have these guidelines or it is an unconstitutional statute. We have a duty to come up with a constitutional statute. Proponent Senator Jean Turnage stated that Mr. Biers had well described the need for the bill.

Proponent Mrs. Tom Winsor stated that as the mother of two school age children with a degree in psychology, a Christian and a Welcome Wagon hostess, she wished to testify in favor of the bill. She objected to the easy availability of

pornographic material, especially to children. She pointed out that we have a court system to interpret the intent of the law. There were no other proponents.

Opponent William L. Romine, representing the Montana Theatre Owners Association, left a prepared statement. Opponent Ray Gulick, representing the Public Lobby, stated you shouldn't make laws you can't enforce and left a prepared statement. There were no other opponents.

Senator Thiessen, in closing, stated he would go along with the first amendment if the committee would change "more" to "less." He stated we censor all the time in government, we censor farmers and ranchers and others. He stated that Tom Biers would comment on the amendments.

Tom Biers stated the first amendment might be mere surplusage, his research indicates they can't go beyond the state statute.

Representative Moore stated he noticed the act has a paragraph on indecent exposure in the original subsection (d) at the top of page 2. 94-5-504 relates directly to indecent exposure. Mr. Romine stated the original bill amended three separate sections of the present code, amended these in the Senate but forgot to change the title.

Representative Hager questioned whether this would affect movies being filmed in Montana, to which Tom Biers replied that it possibly could. Representative Hager then questioned if the proposed amendment would work a hardship on the theatre, to which Mr. Romine replied that on page 4, lines 13 through 15, it states screens be designed in such a way that they can't be seen outside the theatre. Theatre owners are trying to get protection back in the bill with his amendment.

Representative Pasausen questioned whether this bill sets out to do what Senator Thiessen intended and he was advised that it doesn't, but it is better than nothing. Representative Meloy stated the reason for the bill is because the existing definition on obscenity is from *Memoirs* and questioned why they didn't make the same changes to the definition of sexual material in section 2 as the Supreme Court has given freedom of speech.

The hearing was then closed.

EXECUTIVE SESSION.

SENATE BILL NO. 130 Representative Lory made a motion BE CONCURRED IN. The motion carried unanimously with Representatives Moore, Yardley, Day and Kimble absent.

March 20,

EE CONCURRED IN

MR.SPEAKER:.....

We, your committee on..... **JUDICIARY**

having had under consideration **SENATE** Bill No.

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 82-4311,
R.C.M. 1947, TO ADD A FILING FEE TO BE PAID TO THE SECRETARY OF
STATE WHEN FILING TORT CLAIMS."

Respectfully report as follows: That **SENATE** Bill No.

EE CONCURRED IN

XXXXX

1 SENATE BILL NO. 130

2 INTRODUCED BY TURNAGE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
5 82-4311, R.C.M. 1947, TO ADD A FILING FEE TO BE PAID TO THE
6 SECRETARY OF STATE WHEN FILING TORT CLAIMS."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 82-4311, R.C.M. 1947, is amended to
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13 provisions of this act shall be presented to and filed with
14 the secretary of state within one hundred twenty (120) days
15 from the date of the occurrence from which the claim arose
16 or when the injury should reasonably have been discovered,
17 whichever is later. A fee of ten dollars (\$10) shall be paid
18 to the secretary of state at the time the claim is presented
19 for filing."

-End-

REFERENCE BILL

SB 130